Divgi Warner Pvt. Ltd. Vs. Cc

Divgi Warner Pvt. Ltd. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/38124

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-15-2005

Reported in : (2004)(175)ELT885Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Divgi Warner Pvt. Ltd.

Respondent : Cc

Judgement :

1. Heard both sides. The issue involved is whether the royalty paid for technical know-how is includible in the assessable value of the imported components.

2. For the sake of reference, the clause relating to 'Royalty' is reproduced as under: - "6.1) In consideration of the obligations undertaken by BWA under this Agreement, LICENSEE shall, among other things, pay BWA an earned royalty for the duration of the Agreement, including any extensions thereof, beginning from the date of commencement of COMMERCIAL PRODUCTION of the applicable Group of LICENSED PRODUCTS sold during the term of this Agreement in the PRIMARY TERRITORY by the LICENSEE, net of any income tax of India on such royalties (such Indian Income Tax to be borne and paid by the LICENSEE), equal to: b) three percent (3%) of NET SALES of Group II LICENSED PRODUCTS; and provided that the total payment of royalties for all Groups of LICENSED PRODUCTS does not exceed eight percent (8%) of net sales over a period of ten (10) years from the date of this Agreement or seven (7) years from the date of

commencement of COMMERCIAL PRODUCTION. However, in no event shall LICENSEE pay BWA any earned royalty on LICENSED PRODUCTS sold by LICENSEE to BWA for resale by BWA in the SECONDARY TERRITORY." 3. The ld. Counsel submitted that the royalty is for finished goods and as such the same is not includible in the imported components. In support of his contention, the Id. Counsel relied on the decisions in the case of S.D. Technical Service v. CC, New Delhi - 2003 (155) ELT 274 (Tri.-LB), Panalfa Dongwon India Ltd. v. CC., Mumbai 2003 (155) ELT 287 (Tri.-LB), Ferodo India (P) Ltd. v. CC., Mumbai - 2002 (142) ELT 343 (Tri.-Del.) and Hoerbiger India Pvt Ltd. v. CC., Mumbai - 2003 (156) ELT 62 (Tri.-LB) and submitted that in view of these decisions the appellant was not liable to pay any duty on the royalty.

4. The ld. JDR appearing for the revenue submitted that unless there is no know-how available to the appellant, it will be difficult for them to use and manufacture the product and as such the royalty amount paid is liable to be included in the assessable value.

5. After hearing, perusal of the records and the case laws and relevant provisions of the agreement as mentioned above, we are satisfied that the royalty amount is not liable to be included in the assessable value. We, therefore, set aside the impugned order and allow the appeal filed by the appellant.